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9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

11  
12 A.B.,

13 Plaintiff,

14 vs.

15 SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT,

16 Defendant.  
17  
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CASE NO. C 07-04738 PJH

**EX PARTE APPLICATION FOR  
ADDITIONAL PAGES FOR PARTIES'  
CROSS-MOTIONS FOR SUMMARY  
JUDGMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF KIMBERLY A.  
SMITH; [PROPOSED] ORDER**

[Civil Local Rules 7-4, 7-10]

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20 The San Francisco Unified School District ("District") hereby submits this ex parte  
21 application to request additional pages for the parties' cross-motions for summary judgment in the  
22 above-captioned matter. As demonstrated in the attached Memorandum of Points and Authorities  
23 and Declaration of Kimberly A. Smith, the District requires pages in excess of the twenty-five (25)  
24 page limit provided for by Civil Local Rule 7-4, based on the number and complexity of the issues  
25 to be briefed in the District's motion. Thus, the District seeks an order that its motion, and  
26 Plaintiff's corresponding motion for summary judgment, may exceed twenty-five (25) pages by no  
27 more than fifteen (15) pages.  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. ADDITIONAL PAGES ARE NECESSARY DUE TO THE NUMBER AND COMPLEXITY OF ISSUES INVOLVED**

This case is an appeal from an administrative special education “due process” proceeding before the Office of Administrative Remedies. The due process proceeding considered eleven (11) issues and sub-issues. Following a nine (9) day hearing, at which testimony and documentary evidence were submitted by the parties, the administrative law judge ("ALJ") assigned to the case issued a sixty-two (62) page decision partially in favor of the District and partially in favor of the Plaintiff. The record from the administrative proceedings is three thousand six hundred and two (3,602) pages and includes all pleadings, the transcript of hearing at which eighteen (18) witnesses testified and approximately one hundred and twenty (120) exhibits.<sup>1</sup> (Declaration of Kimberly A. Smith (“Smith Declaration”) at ¶¶ 2-3.)

This case will be decided by cross motions for summary judgment, which will be based solely on the administrative record from the underlying proceeding. The District will be asking this Court to affirm the decision of the ALJ while Plaintiffs seek reversal of those issues on which he previously failed to prevail.

The District's motion for summary judgment will summarize the lengthy administrative record from the due process hearing and address the eleven (11) issues and sub-issues which were decided by the ALJ. The twenty-five (25) page limit proscribed by Civil Local Rule 7-4 would cause a substantial hardship to the District because it would require the District to omit or significantly abbreviate relevant facts and/or legal argument. (Smith Declaration at ¶5.)

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<sup>1</sup> The parties are currently in the process of reviewing the record to confirm its accuracy and completeness. Once this is done, Plaintiff will lodge the record with the Court. (Smith Declaration at ¶4.)

Moreover, an order providing additional pages as requested will not disadvantage Plaintiff as the length of the District's motion for summary judgment bears no impact on Plaintiff's substantive or procedural rights. Further, for parity, the District is requesting that the additional pages also be provided to Plaintiff for his motion for summary judgment.

## **II. THE DISTRICT'S APPLICATION FOR EX PARTE RELIEF IS TIMELY AND APPROPRIATE**

The Court has set hearing on these cross-motions for June 25, 2008. Pursuant to the Court's minute order of January 28, 2008, the parties must file their cross-motions on or before April 16, 2008.

Pursuant to Civil Local Rule 7-4, a party may request the Court's permission to exceed the page limit in a brief or memorandum prior to the due date of such brief or memorandum. Given that the last day the District may file its motion for summary judgment is April 16, 2008, the District is making a timely request of this Court. Further this request is made in accordance with the procedure for seeking ex parte relief set forth in Civil Local Rule 7-10.

## **III. CONCLUSION**

In order to ensure a full and fair consideration of the issues on appeal from the underlying administrative decision, the District seeks an order that the parties' cross-motions for summary judgment may exceed the twenty-five (25) page limit by no more than fifteen (15) pages.

DATED: February 22, 2008

Respectfully submitted,

FAGEN FRIEDMAN & FULFROST, LLP

By: /s/ Kimberly A. Smith

Kimberly A. Smith  
Attorneys for San Francisco Unified School  
District

00239.00115/63050.1

**DECLARATION OF KIMBERLY A. SMITH IN SUPPORT OF APPLICATION FOR  
ADDITIONAL PAGES IN MOTION FOR SUMMARY JUDGMENT**

I, Kimberly A. Smith, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Fagen Friedman & Fulfroft LLP, attorneys of record for the San Francisco Unified School District ("District"). If called as a witness, I could and would competently testify to all facts within my personal knowledge except where stated upon information and belief.

2. The above-captioned matter is Plaintiff's appeal from an administrative special education "due process" hearing conducted pursuant to the Individuals with Disabilities Education Act ("IDEA").

3. Following a nine (9) day hearing by the Office of Administrative Remedies, an administrative law judge ("ALJ") issued a sixty-two (62) page opinion partially in favor of the District and partially in favor of the Plaintiff. The administrative record from the underlying hearing consists of three thousand six hundred two (3,602) pages and includes all pleadings, hearing transcripts that include testimony from eighteen (18) witnesses and approximately one hundred twenty (120) exhibits.

4. The parties are currently in the process of reviewing the record to confirm its accuracy and completeness. Once this is done, Plaintiff will lodge the record with the Court.

5. As of the filing of this ex parte application, the District has begun to draft its motion for summary judgment. It has become clearly evident that the twenty-five (25) page limit will be insufficient to summarize the administrative record and addresses the eleven (11) issues and sub-issues decided by the ALJ. The undersigned counsel for the District does not believe that it can draft a motion within the twenty-five (25) page limit of the local rules without failing to adequately brief all of the issues.

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1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct.

3 /s/ Kimberly A. Smith  
4 Kimberly A. Smith  
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CASE NO. C 07-04738 PJH

**[PROPOSED] ORDER GRANTING  
ADDITIONAL PAGES FOR  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

[Civil Local Rules 7-4; 7-10]

17 Having considered the District's ex parte application for additional pages, and finding good  
18 cause therefor,

19 IT IS HEREBY ORDERED that the Parties' Cross Motions for Summary Judgment may  
20 exceed the twenty-five (25) page limitation by no more than fifteen (15) pages.

21 IT IS SO ORDERED.

22  
23 Dated: \_\_\_\_\_

24 \_\_\_\_\_  
25 The Honorable Phyllis J. Hamilton  
26 Judge of the United States District Court for  
27 the Northern District of California  
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